IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1135 of 1995

in

SPECIAL CIVIL APPLICATIONNo 10653 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes : YES

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? No : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No : YES

5. Whether it is to be circulated to the Civil Judge? No :

STATE OF GUJARAT

Versus

BRIJKISHIORE GARG

Appearance:
MR. KG SHETH, AGP for Appellants
RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE A.L.DAVE

Date of decision: 23/09/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated July 15, 1995 rendered by the learned Single Judge in Special Civil Application No. 10653/95 by which eligibility of the daughter of the respondent for admission to the government medical colleges is determined and the appellants are directed to give her due position in the merit list without being prejudiced on account of Rules 1 & 5.2 of the Rules framed for admission to 1st M.B.B.S./ 1st B.D.S./1st B.Physio Course at the Government Medical Colleges, on the basis of marks obtained by her at the Central Board of Secondary Examination in XIIth standard coupled with her credit in mathematics as additional subject in 1995.

2. It may be stated that Special Civil Application No. 10653/94 was initially instituted by the respondent as well as one Dr. Jagjit Singh Panjarath on September 1, 1994, but on September 17, 1994 Dr. Jagjit Singh had filed a separate petition being Special Civil Application No. 11058/94. At the time when the petitions were taken-up for hearing, a statement was made by the learned Counsel for the original petitioner Dr. Jagjit Singh that son of Dr. Jagjit Singh had already got admission somewhere-else and the petition had become infructuous. Therefore, Special Civil Application No. 10653/94 was maintained by the respondent only.

3. The respondent is holding the office of Senior Executive in the set-up of National Dairy Development Board at Anand. Prior to his appointment as Senior Executive at Anand, the respondent was discharging duties as an officer of National Dairy Development Board in its set-up at Jaipur. The respondent was transferred to Anand in the month of August, 1992. Prior to transfer of the respondent at Anand, his daughter named Sweta Garg was prosecuting her studies in Std. XI at Kendriya Vidyalaya at Jaipur,which is affiliated to the Central Board of Secondary Education, New Delhi. Upon the transfer of the respondent in the year 1992 at Anand, his daughter secured admission in the middle of the term in XIth Standard in School at Vallabh Vidyanagar affiliated to Central Board of Secondary Education. When daughter of the respondent was enrolled in XIth standard at Jaipur, she had opted to join the discipline of medicine,but had not selected mathematics as one of her subjects. At Anand also,the daughter of the respondent was permitted to continue the studies with the same option without any change in subjects. The respondent's

daughter passed the examination conducted for XIth standard and continued her studies in XIIth standard. She appeared in All India Senior School Certificate Examination conducted by the Central Board of Secondary Education in the month of May, 1994 with subjects of physics, chemistry and biology and secured 83.4% marks in aggregate. She then applied for admission to 1st M.B.B.S./1st B.D.S./1st B. Physio course at Government medical colleges. A merit list of the students who were found eligible for seeking admission to the discipline of medicine was published by the Dean, B.J.Medical College, Central Degree Admission Cell on August 26, 1994. The name of daughter of the respondent did not figure in the said merit list. On inquiry,she learnt that her name was not included inthe merit list,as she had not passed the qualifying examination for admission with mathematics as one of the subjects in the examination conducted by Central Board of Secondary Education, New Delhi. Therefore, the respondent instituted Special Civil Application No. 10653/94, and claimed following reliefs:

"(A) That this Hon'ble Court be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction requiring the respondents to include the names of Sweta Garg and Suru Sher Singh Panjarath in the merit list prepared by the respondent no.2 for the discipline of Medicine, Dental and Physio Therapy and thereupon,to interview them and thereafter to admit them in the respective disciplines to which they would be entitled to on the basis of their marks in the subject of physics,chemistry and biology for the academic year 1994-95;

(B) That this Hon'ble Court be pleasedto issue a writ of mandamus and/or any other appropriate writ, order or direction, quashing and setting aside Rule 1.3 of the Rules for Admission to the First MBBS/First BDS/ and First Physio Therapy for the Government Medical Colleges appearing at Annexure-C to the petition, on the ground that the same is violative of Article 14 of the Constitution of India, to the extent it insists forthe subject of Mathematics in respect of students, who have passed All India Senior School Certificate Examination, conducted by the Central Board of

Secondary Education."

4. The petition was placed before the learned Single Judge for admission hearing on September 2, 1994 and by way of ad-interim relief, two seats were ordered to be kept vacant in medical colleges, as Dr. Jagjit Singh was also one of the petitioners in the said petition. However, the ad-interim relief granted by the learned Single Judge was vacated by an order dated September 17, 1994 and the petition was fixed for admission hearing on September 26, 1994. When the matter came-up for admission hearing, rule was issued by an order dated February 17, 1995 making it returnable on February 24, 1995. From the impugned judgment, it becomes clear that it was not possible for the Court to hear and dispose of the matter finally on that day and, therefore, a liberty was reserved to the learned Counsel for the parties to make a mention before the learned Vacation Judge for hearing the matter, but the matter could not be taken-up for hearing during the vacation and thereafter it came-up for final hearing before the learned Single Judge on July 15, 1995.

5. During the pendency of the petition, the daughter of the respondent appeared in the subject of mathematics in Senior School Certificate Examination held by the Central Board of Secondary Education in the year 1995 and secured A-1 Grade i.e. 88% marks. The photostat copy of marksheet indicating that she had appeared and cleared additional subject of mathematics was placed before the Court. It was noticed by the learned Single Judge that the year 1994 had already gone and, therefore, the only question was about her admission in the following year i.e. 1995. At the time of final hearing of the petition, an oral apprehension was expressed by the learned Counsel for the respondent that even if an application was made, name of daughter of the respondent would not be included in the merit list, as authorities would deduct 15 marks in terms of Rule 5.2 of the Rules for admission to 1st M.B.B.S./1st B.D.S./1st B.Physio Course at The Government Medical College, P.S.Medical Colleges, Karamsad-Govt. Dental Colleges-Schools of Physiotherapy in the Gujarat State ("the Admission Rules" for short) and, therefore, it was submitted that appropriate direction should be given to the appellants not to deduct 15 marks while determining merit of daughter of the respondent. We may state that no application seeking permission of the Court, either to amend memorandum of the petition or prayer clauses, was made, but the learned Single Judge entertained the apprehension expressed by the learned Counsel for the

respondent and proceeded to examine the scope and ambit of Rules 1 & 5.2 of the Admission Rules.

6. After hearing the learned Counsel for the parties, learned Single Judge examined the pattern adopted by the Gujarat Higher Secondary Examination Board as well as that by the Central Board of Seconary Education and held that from the language employed in Rule 1, it was not discernible as to how the daughter of the respondent was not eligible for admission to medical colleges only on the ground that she had not opted for the subject of mathematics in the Central Board of Secondary Education Examination. The learned Single Judge further deduced that the mention about the month "March/April of the current year or October/November of the preceding year" in Rule 1 cannot be applied with rigour and the daughter of the respondent should be treated as having passed the qualifying examination in the current year while considering her case for admission in the year 1995-96. So far as Rule 5.2 of the Admission Rules is concerned, the learned Single Judge concluded that passing of the examination in the subject of mathematics by the daughter of the respondent in the year 1995 cannot be treated as she having failed or taken drop at the qualifying examination and, therefore, the authorities were not entitled to deduct 15 marks while considering her case for admission to medical colleges. In the ultimate result, by the impugned judgment learned Single Judge, after determining eligibility in favour of the daughter of the respondent, has directed the appellants to give her due position in the merit list without being prejudiced on account of Rules 1 & 5.2 of the Admission Rules, on the basis of marks obtained by her at the Central Board of Secondary Education Examination in XIIth standard coupled with her credit in mathematics as additional subject in 1995, giving rise to the present appeal.

7. Mr. K.G.Sheth, learned Counsel for the appellants vehemently contended that without insisting on the respondent to confine himself to specific case pleaded in the petition, the respondent should not have been permitted to deviate from those pleadings by entertaining oral apprehension expressed by the learned Counsel for the respondent at the time of hearing of the petition and, therefore, the impugned judgment should be quashed. What was stressed by the learned Counsel for the appellants wasthat the learned Single Judge has rewritten Rule 1 of the Admission Rules by holding that the language employed in Rule 1 does not lay down that in order to be eligible for being admitted to discipline of

medicine, it is necessary for a student to opt for subject of mathematics and, therefore, the appeal should be accepted. It was claimed that by holding that the mention about month "March/April of the current year or October/November of the preceding year" in Rule 1, cannot be applied with rigour, the learned Single Judge has tinkered with education policy of the State Government which is not permissible to a Court hearing petition under Article 226 of the Constitution. The learned Counsel for the appellants asserted that when daughter of the respondent did not appear in the examination of subject of mathematics when it was due and appeared in the examination of the said subject subsequently in the year 1995, she had failed as well as taken drop at the qualifying examination within the meaning of Rule 5.2 of the Rules and, therefore, direction given to the appellants not to deduct 15 marks while considering merits of daughter of the respondent, should be set aside. It was strenuosly urged that the learned Single Judge in exercise of jurisdiction under Article 226 of the Constitution,has relaxed the rules governing admission to educational institutions and rewritten them by devising a scheme of his own relating to admission and, therefore, the appeal should be allowed.

8. Though the respondent is duly served, he has neither appeared in person nor through advocate.

9. We have taken into consideration the record of the petition and heard the learned Counsel for the appelants at length. From the averments made in the original petition,it becomes clear that the daughter of the respondent was not admitted to 1st M.B.B.S./1st B.D.S./1st B. Physio Course at the Government medical colleges, as she had not passed examination conducted by Central Board of Secondary Education, New Delhi taking mathematics as one of her subjects. During the pendency of the petition for final hearing, she had cleared subject of mathematics also and though amended marksheet was produced before the learned Single Judge, no application was submitted by the respondent seeking any amendment either in the memorandum of petition or in the relief clause. Para-5 of the impugned judgment makes it more than clear that an oral apprehension was expressed by the learned Counsel for the respondent to the effect that name of daughter of the respondent would not be included in the merit list even if an application seeking admission in discipline of medicine was submitted by her,for the year 1995 because the authorities would deduct 15 marks on the ground that she had either failed or taken drop at the qualifying examination and prayed

the Court to give appropriate direction to the appellants. Thus, it becomes evident that on an oral apprehension, the petition was heard and direction was given to the appellants to give due position in the merit list to the daughter of the respondent on the basis of marks obtained by her at the Central Board of Secondary Education Examination in XIIth Standard coupled with her credit in mathematics as additional subject in 1995. It is an admitted position that before the petition came to be disposed of,no application was filed by daughter of the respondent seeking admission to medical colleges for the year 1995-96, nor any adverse decision was reached by the appellants to deduct 15% marks on the basis that she had either failed or taken drop at the qualifying examination. Therefore, there is no manner of doubt that in absence of any final decision adversely affecting the right of the daughter of the respondent having been taken, the petition was at pre-mature stage. Ordinarily, the Court would dismiss the petition filed by the petitioner if it is filed at a pre-mature stage, when no final decision adversely affecting the right of the petitioner is taken. In certain cases, a petition under Article 226 of the Constitution may be maintainable against a threatened injury, but the petitioner will have to establish that the action proposed to be taken by the authorities is totally without jurisdiction and contrary to rules. Even in the context of challenge to show-cause notice in a petition under Article 226 of the Constitution, the Supreme Court has ruled that if the petitioner is likely to suffer a grave and prejudicial injury by an act which is without jurisdiction, the petition may be maintainable. However, when no action is taken at all, Court would not be justified in examining the apprehension which may be expressed orally on behalf of the petitioner at the time of hearing and it would not be prudent to entertain petition on the basis of so-called oral apprehension expressed at the time of hearing. It hardly needs to be emphasised that ordinarily a Court will confine its decision to the existing facts and will not enter into presumption and inference. The respondent had approached the Court with a specific case that the appellants were not justified in not placing his daughter in the merit list on the ground that she had not passed the examination in the subject of mathematics. Therefore, the decision should have been confined to the facts pleaded in the petition and should not have been reached on apprehension expressed by the learned Counsel for the respondent. In the petition no relief was sought by the respondent that name of his daughter was not likely to be included in the merit list, as the authorities were bent upon deducting 15 marks in

terms of Rule 5.2 of the Rules. No ground was taken in the writ petition assailing so-called action to be taken by the appellants on the basis of Rule-5.2 of the Rules. We find that the learned Single Judge has granted a relief not even prayed for by the respondent. A writ Court normally would not grant relief in excess of what is prayed for unless the petition is permitted to be amended in the manner known to law and appropriate reliefs are claimed. In our opinion, the learned Single Judge was in error in entertaining oral apprehension and proceeding to give impugned direction on that basis. In this connection, the learned Counsel for the appellants drew our attention to the following passage from para-6 of the decision of the Supreme Courst in S.S.Sharma and others v. Union of India and others, AIR 1981 S.C. 588.

> "No relief has been sought for quashinng the Office Memorandum dated 20th July, 1974. No ground has been taken in the writ petitions assailing the validity of the Office Memorandum on the basis now pressed before us. We are of opinion that the courts should ordinarily insist on the parties being confined to their specific written pleadings and should not be permitted to deviate from them by way of modification or supplementation except through the well-known process of formally applying for amendment. We do not mean that justice should be available to only those who approach the court confined in a strait-jacket. But there is a procedure known to the law, and long established by codified practice and good reason, for seeking amendment of the pleadings. If undue laxity and a too easy informality is permitted to enter the proceedings of a court it will not be long before a contemptuous familiarity assails its institutional dignity and ushers in chaos and confusion undermining its effectiveness. Like every public institution, the courts function in the security of public confidence, and public confidence resides most where institutional discipline prevails. Besides this, oral submissions raising new points for the first time tend to do grave injury to a contesting party by depriving it of the opportunity, to which the principles of natural justice hold it entitled, of adequately preparing its response."

In view of the principles enunciated by the Supreme Court in the above-referred to decision, we think

that the proper course for the Court would have been to require the respondent - original petitioner to amend the petition incorporating subsequent development, if any, and claiming appropriate reliefs on that basis so as to give proper opportunity to the otherside to meet the totally new plea raised for the first time, at the time of hearing of the petition. Having regard to all these salutory principles, we are of the opinion that the petition could not have been decided on apprehension and, therefore, operative direction given by the learned Single Judge is liable to be set aside.

10. On comparison of pattern of education adopted by Gujarat Higher Secondary Board and that by Central Board of Secondary Education, learned Single Judge has held that from the language employed in Rule 1 of the Admission Rules it is not discernible as to how the daughter of the respondent was not eligible only on the ground that she had not opted for subject of mathematics in the Central Board of Secondary Education Examination. Further the learned Judge has also held that mention about month "March/April of the current year or October/November of the preceding year" in Rule 1 of the Rules cannot be applied with rigour and the eligibility cannot be determined on strict calendrical basis, when the students coming from different examining bodies, are coming to compete for the purpose of pursuing medical course. On interpretation of Rule 5.2 of the Rules, learned Single Judge has held that daughter of the respondent had passed the Senior School Certificate Examination from the Central Board of Secondary Education and had also passed additional subject of mathematics in the year 1995 and, therefore, it cannot be said that she had either taken drop at the qualifying examination or failed in the qualifying examination so as to enable the authorities to deduct 15 marks in terms of the said Rule. In order to understand the scope and ambit of Rules 1, 1.3 & 5.2 of the Rules, it would be advantageous to reproduce them at this stage. The relevant rules read as under :-

> "1. Qualifying examination for admission shall be higher secondary certificate examination (science stream) taking Physics, Chemistry, Biology, Mathematics and English under the 10 + 2 education pattern conducted by the Gujarat Higher Secondary Education Board or Central Board of Secondary Education,New Delhi or Council for the Indian School Certificate Examination, New Delhi from any of the

recognised institutions located in the Gujarat State in the month of March/April of the current year or October/November of the preceding year, or in so far as candidate referred to in rule 1.1, 3.2 and 3.3 are concerned other equivalent qualifications with science subjects specified above during the corresponding period.

1.3 Candidates passing qualifying examination of the Central Board of Secondary Education, New Delhi and of the Council for the Indian School Certificate Examination, New Delhi from any institutions located in the Gujarat State shal be admitted to Medical/Dental/Physiotherapy colleges/ schools on pro-rata basis. The pro-rata distribution of seats shall be calculated on the basis of number of students who have passed the examination conducted by the Gujarat Board viz-a-viz Central Board and the Council in proportion to the total number of students who have secured aggregate of 55 marks in external evaluation in Science subjects including mathematics in theory papers only. The collegewise distribution of available seats to the students from the Central Board and from the Council shall be on the ratio of the existing number of seats in each of the Govt. Medical/Dental College/Physiotherapy schools in the State.

5.2 Fifteen marks shall be deducted for each failure or drop at the qualifying examination . For this purpose non-appearance in the qualifying examination when due or appearance at the qualifying examination in part will be treated at par and entail deduction of fifteen marks."

A bare reading of rule 1 makes it evident that a candidate applying for admission to 1st M.B.B.S./1st B.D.S./1st B.Physio course at the Government medical colleges, has to pass qualifying examination for admission. Qualifying examination for admission is

Higher Secondary Certificate Examination (Science Stream) taking physics, chemistry, biology, mathematics and english under 10 + 2 education policy conducted by the Gujarat Higher Secondary Education Board or Central Board of Secondary Education, New Delhi or Council for the Indian School Certificate Examination, New Delhi. Even rule 1.3 of the Rules for admission requires that candidates passing qualifying examination of the Central Board of Secondary Education, New Delhi and of the Council for the Indian School Certificate Examination, New Delhi from any institutions located in the Gujarat State can be admitted to Medical/Dental/Physiotherapy Colleges/Schools on pro-rata basis on evaluation of marks in science subjects including mathematics. Thus, a student seeking admission to first year medical course, has to pass examination conducted for the subjects of physics, chemistry, biology, mathematics and English. On comparison of the pattern adopted by the Gujarat Higher Secondary Education Board and Central Board of Secondary Education, New Delhi, it is not proper to come to the conclusion that a student should be considered eligible even if he has not opted for the subject of mathematics at the examination conducted by Central Board of Secondary Education, New Delhi. In our considered opinion, to say that a student who has not taken mathematics as one of his subjects and passed the same, is eligible for admission to 1stM.B.B.S./1st B.D.S./1st B.Physio Course at the Government medical colleges, is to rewrite the rule, which is not permissible to a Court hearing a petition under Article 226 of the Constitution. The eligibility of a student has to be determined with reference to requirements prescribed in rule 1 and the Court has no power to relax the requirements prescribed in the Rule. It is relevant to note that validity of Rule 1 and Rule 5.2 of Admission Rules as being irrational, arbitrary and violative of provisions of Article 14 of the Constitution, was not challenged; whereas validity of rule 1.3 of the Rules was not pressed at the time of hearing of the petition. It is well settled that which standards should be prescribed for determining eligibility is the task assigned to academicians and the Court, which is least equipped in such matters, should not venture either to relax the requirement of eligibility or substitute its own view for that of academicians. Under the circumstances, the conclusion of the learned Single Judge that from the language employed in rule 1 it is not discernible as to how a student is not eligible only on the ground that he had not opted for subject of mathematics in the Central Board of Secondary Education Examination, is erroneous and deserves to be set aside. Again, having regard to

exigencies, it is prescribed in rule 1 that a student seeking admission must pass qualifying examination in the month of March/April of the current year or October/November of the preceding year. The view that mention about the month "March/April of the current year or October/November of the preceding year" in rule 1 cannot be applied with rigour and the eligibility cannot be determined on strict calendrical basis when the students coming from different examining bodies are coming to compete for the purpose of pursuing the course, is simply erroneous and cannot be sustained at all. If a student has not passed qualifying examination either in the month of March/April of the current year or October/November of the preceding year, he is not entitled to seek admission in the relevant year to medical course in terms of rule 1 of the Rules. At this stage, it would be advantageous to refer to one decision of our High Court rendered in case of J.A.Joshipura v. State, 1984(2) GLR 761. Therein, the petitioner had passed Higher Secondary Examination taken by Gujarat Higher Secondary Education Board in July 1981 and made application for joining medical course. As admissions were closed at higher percentage of marks obtained by other candidates, the petitioner could not get admission in medical course. The petitioner again applied for admission in the year 1982, but admission was denied to him, as he had not passed qualifying examination in "March/April of current year or in October/November of the precedent year" as required by Rule 1. Thereupon petition under Article 226 of the Constitution was filed and validity of Rule 1 was challenged. While dismissing the petition, it is held as under :-

> "Now remains the question as to whether this sub-classification of students similarly situated, all of whom had passed the qualifying examination, has any rational nexus to the object sought to be achieved. It is now well settled that the object sought to be achieved by providing classification and sub-classification of students for being considered for admission to medical courses starting year after year in medical colleges is to draw best talents so that the country can have best doctors in future. Keeping this object in view, if the executive bona fides takes a policy decision to remove from contest those students who have passed the qualifying examination in remote past and who had already their opportunity to be considered for admission to medical courses started in past years and who were elbowed out of contest because

of their low merits and more meritorious students got admitted in the past years courses, if such students are not again given second or third opportunity or even more and if fresh students who had recently passed their qualifying examination and who had not been elbowed out on merits by any one, are only considered for the purpose of admission to the relevant medical courses, starting in the given year it cannot be said that adpotions of this yard-stick has no nexus to the object sought to be achieved.Those students who have tried and failed on merits to get admission on the basis of having passed the qualifying examination in the past can equally be treated to be less meritorious as compared to those students who are freshers and who have not been weeded out of contest on account of their low merits. Consequently, the policy of limiting the area of choice to only those students who had passed the qualifying examination in the current year or one qualifying examination immediately preceding the current year can be said to have a rational nexus to the object sought to be achieved viz. to attract best talents for medical courses. It is trite to say that those who have tried and failed on merit necessarily cannot be treated on par with those who had no chance of trial even once and who have never failed on merits. Consequently, it cannot be said that those who have been weeded out of contest should be permitted to try their luck again and again and to complete with the fresh students on the criterion of merits, and that if they are not permitted to do so, the object underlying the classification would suffer and that best talets would be excluded. It is impossible to agree with the submission of Mr. Tanna that if students who had passed the qualifying examination in distant past and who had stood no chance on merits to get admission in the medical course in the past years on account of their low ranks on merit list due to less number of marks, are not permitted to appear again and again in succeeding years, may be number of times till they ultimately get admission to medical courses at any distant future point of time, the object of drafting best talents to the medical courses would get frustrated. To say the least, to allow such students to go on trying for admissions in perpetuity for any number of years till they

> ultimately get admitted, would frustrate the very object of drafting best talents to medical courses so that the country can have best doctors. It must, therefore, be held that the sub-classification of students passing qualifying examination within the given period and excluding those students who have passed the same qualifying examination beyond this limit in distant past is reasonable and has also a rational nexus with the object sought to be achieved thereby viz. to get best talents attracted to medical courses with the ultimate object of making available best doctors for the service of ailing humanity. The main submission of Mr. Tanna for the petitioner challenging the constutional validity of the executive rules for admission, therefore, fails."

We are in respectful argeement with the view expressed in the above-referred to case. The task of laying down guidelines for admission to be effected is in the realm of a policy decision of the executive and as policy decision is not arbitrary, direction could not have been given to the authorities to consider case of the daughter of the respondent for admission in the year 1995 ignoring requirement of Rule 1 that a candidate must pass qualifying examination in the month of March/April of the current year or in October/November of the preceding year. To direct the authorities that requirement of passing qualifying examination by the student in the month March/April of the current year or October/November of the prceeding year should be ignored tantamounts to directing the authorities to commit breach of essential requirement of rule-1. A Court while hearing petition under Article 226 of the Constitution cannot direct the authorities to commit breach of the rule and do a thing which is not contemplated by a rule. If such a direction is given, it is bound to result into chaos and those students who have not passed the qualifying examination in the month March/April of the current year or October/November of the preceding year, would also be entitled to seek admission to medical course contrary to rule. In a given case,the powers may be exercised by the authorities in an arbitrary manner if direction is issued by the Court to the authorities to ignore requirement relating to passing of qualifying examination in the month of March/April of the current year or October/November of the preceding year. Moreover, the purpose of requirement that a student should pass qualifying examination in the month of

March/April of the current year or October/November of the preceding year is to maintain excellance in medical course. To maintain excellence in medical course, the medical colleges will have to be commenced on schedule and to be completed within the schedule so that students will have full opportunity to study full course to meet their excellence and come at par excellence. The direction given contrary to the eligibility criteria regarding passing of qualifying examination by a student in the month of March/April of the current year or October/November of the preceding year would result into admitting a student to the course in the midstream disturbing the course and also would work as handicap to the candidates themselves to achieve excellence. In case of State of U.P. and others vs. Dr. Anupam Guta etc. AIR 1992 S.C. 932, the Supreme Court has held that direction by the High Court to admit the candidates in the midstream is bad in law. If the interpretation put by the learned Single Judge is upheld, it would mean that a student would be entitled to admission to medical course in the midstream causing lot of inconvenience to all. In our opinion, a student, who has not passed qualifying examination in the month of March/April of the current year or October/November of the preceding year, cannot be admitted to medical course next year in view of clear and mandatory provisions of rule 1 of the Rules. Therefore, the finding recorded by the learned Single Judge to the effect that mention about the month "March/April of the current year or October/November of the preceding year" cannot be applied with vigour and case of the daughter of the respondent for admission for the year 1995-96, is erroneous and liable to be set aside.

11. Again, the conclusion reached by the learned Single Judge that the authorities would not be entitled to deduct 15 marks as provided in Rule 5.2 of the Rules because the daughter of the respondent had passed Senior School Certificate Examination conducted by the Central Board of Secondary Education as additional subject of mathematics in the year 1995 does not get support from the plain language of Rule 5.2. Rule 5.2 which is reproduced above makes it very clear that for the purpose of said rule, non-appearance in the qualifying examination when due or appearance at the qualifying examination in part must be treated at par and entail deduction of 15 marks. It is an admitted position that daughter of respondent did not appear in the subject of mathematics when examination for the said subject was due and had appeared at the qualifying examination in part. Moreover, she had passed the subject of mathematics in

May, 1995. Thus, there is no manner of doubt that for the purpose of rule 5.2, daughter of the respondent had not appeared in the qualifying examination when it was due and had appeared at the qualifying examination in part enabling the authorities to deduct 15 marks while considering her case for admission to medical course. It is true that the daughter of respondent had passed the Senior School Certificate Examination conducted by the Central Board of Secondary Education, but as required by rule 1 of the Rules, she had not taken mathematics as one of her subjects and had passed in the examination conducted for the said subject next year i.e. in the month of May, 1995. Though in terms of requirement of rule 1 she was required to appear in subject of mathematics in the qualifying examination, she had not taken the said subject at the relevant time and thus, for the purpose of rule 5.2, there was non-appearance by her in the qualifying examination when due. So also her appearance at the qualifying examination was in part. Under the circumstances, the competent authority would be entitled to deduct 15 marks for failure or drop at the qualifying examination in view of the clear language of rule 5.2. The learned Judge was, therefore, not justified in directing the authorities not to deduct 15 marks while considering the case of daughter of the respondent for admission to medical course in the year 1995-96. The said finding being contrary to explicit language of rule 5.2 of the Admission Rules, will have to be set aside. A writ court cannot assume role of rule making authority nor can it act as an appellate authority over the rule making authority. The respondent has failed to demonstrate before the Court that the action of the appellants in not admitting his daughter is in any manner arbitrary or contrary to the rules governing admission to 1st M.B.B.S./1st B.D.S./1st B. Physio Course at the Government colleges. There is no legal or constitutional infirmity in the decision of the appellants. The Court cannot in absence of any legal or constitutional infirmity, substitute its judgment for that of academicians as if sitting in appeal. By catena of decisions of Supreme Court, it is well settled that the High Court cannot, in exercise of its jurisdiction under Article 226 of the Constitution, (a) relax rules governing admission to educational institutions or rewrite them, (b) devise a scheme of its own relating to admission in place of that made by statutory authority, and (c) direct the educational institution to admit a particular candidate to a course contrary to rules. In matters relating to internal working of an educational institution and more particularly, in the matter of admissions, the Court will not interfere unless the act

complained of is clearly beyond jurisdiction or contrary to the statutes, rules or regulations governing the institution, or there is a statutory duty which the authority has failed to perform or the impugned act is mala fide or arbitrary. It is not established that the act of the appellants in not admitting the daughter of the respondent to 1st M.B.B.S./1st B.D.S./1st B.Physio Course at the Government medical colleges,is beyond jurisdiction or contrary to the statutes, rules or regulations or unreasonable, nor it is demonstrated that the said action of the appellants is arbitrary in any manner. On the totality of the facts and circumstances of the case, we are of the opinion that the learned Single Judge erred in determining eligibility of the daughter of the respondent and directing the appellants to give her due position in the merit list without being prejudiced on account of rules 1 & 5.2 on the basis of marks obtained by her at the Central Board of Secondary Education Examination in XIIth Standard coupled with her credit in mathematics as additional subject in 1995. The impugned judgment is, therefore, liable to be set aside and the appeal deserves to be allowed.

For the foregoing reasons, the appeal is allowed. The judgment rendered by the learned Single Judge in Special Civil Application No. 10653/94 is set aside and the petition filed by the respondent stands dismissed. There shall be no orders as to costs.

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